

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,706

IN THE MATTER OF:

Served June 25, 2015

CHALLENGER TRANSPORTATION, INC.,)
Suspension and Investigation of)
Revocation of Certificate No. 568)

Case No. MP-2014-139

This matter is before the Commission on the request of respondent for reconsideration of Order No. 15,588, served May 15, 2015, which assessed a civil forfeiture against respondent and revoked Certificate No. 568 for respondent's failure to comply with WMATC Order No. 15,085.

I. BACKGROUND

This proceeding was initiated on September 9, 2014, in Order No. 15,032, when the Commission discovered respondent's failure to maintain on file with the Commission at all times, proof of \$1.5 million in revenue-vehicle liability insurance coverage in the form of one or more WMATC Certificate of Insurance and Policy Endorsements as required by WMATC Regulation No. 58.

A. Commission Regulation No. 58-07

Commission Regulation No. 58-07 governs commencement and termination of WMATC Insurance Endorsements, as follows:

Coverage under a WMATC Insurance Endorsement shall commence on the specified effective date and continue until the earliest of:

(a) the specified expiration date;

(b) the effective date specified in a notice of cancellation or thirty (30) days after the notice is received by the Commission, whichever is later;

(c) thirty (30) days after receipt by the Commission of an acceptable application from the insured for voluntary termination of WMATC operating authority;

(d) thirty (30) days after revocation by the Commission; or

(e) the effective date of a later-executed replacement Endorsement.

Commencement and termination shall occur at 12:01 a.m. Eastern Standard Time or Eastern Daylight Time, as applicable.

B. Key Dates

On October 4, 2013, Global Liberty Insurance Company of New York filed on respondent's behalf a \$1.5 million primary WMATC Insurance Endorsement with an effective date of October 24, 2013, and an expiration date of September 9, 2014.

On August 28, 2014, Wesco Insurance Company filed on respondent's behalf a \$1 million primary WMATC Insurance Endorsement with an effective date of June 27, 2014, and an expiration date of June 27, 2015.

On September 26, 2014, Global Liberty Insurance Company of New York filed on respondent's behalf a \$1.5 million primary WMATC Insurance Endorsement with an effective date of September 26, 2014, and an expiration date of September 26, 2015.

C. 91-Day Gap Analysis

By operation of Commission Regulation No. 58-07(e), the first \$1.5 million Global Liberty WMATC Endorsement terminated at 12:01 a.m. on June 27, 2014, the effective time and date of the later-executed \$1 million Wesco WMATC Endorsement.

The \$1 million Wesco WMATC Endorsement terminated at 12:01 a.m. on September 26, 2014, the effective time and date of the later-executed second \$1.5 million Global Liberty WMATC Endorsement.

The foregoing caused Certificate No. 568 to become automatically suspended as of June 27, 2014, and left respondent's WMATC Insurance Endorsement coverage \$500,000 short of the \$1.5 million minimum for 91 days, from June 27, 2014, through September 25, 2014.

D. Order Nos. 15,085, 15,293, and 15,588

Order No. 15,085, served September 30, 2014, lifted the suspension of Certificate No. 568 and gave respondent 30 days to verify cessation of operations during the suspension of Certificate No. 568 as corroborated by copies of respondent's pertinent business records, in accordance with Regulation No. 58-14.¹ Respondent did not respond.

Considering that respondent had not denied operating its vehicle(s) on and after the suspension date, and considering that respondent had failed to produce the required documents, Order No. 15,293, served January 6, 2015, gave respondent until February 5, 2015, to show cause why the Commission should not assess a civil

¹ Order No. 15,085 mistakenly identified the automatic suspension date as September 9, 2014, instead of June 27, 2014.

forfeiture against respondent, and/or suspend or revoke Certificate No. 568, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

Respondent thereafter filed a statement on January 23, 2015, that appeared to acknowledge respondent's failure to maintain the minimum insurance required by Regulation No. 58 but failed to confirm or deny whether respondent continued operating while Certificate No. 568 was suspended, as required by Order No. 15,085. In addition, the statement was not accompanied by any of the documents required by Order No. 15,085.

Because respondent failed to verify whether it ceased operating while suspended and failed to produce the documents required by Order No. 15,085, and because respondent offered no explanation for these failures, the Commission assessed a \$250 civil forfeiture against respondent pursuant to Article XIII, Section 6(f), of the Compact and revoked Certificate No. 568 pursuant to Article XI, Section 10(c), of the Compact.

II. REQUEST FOR RECONSIDERATION

Under Title II of the Compact, Article XIII, Section 4(a), and Commission Rule No. 27, an application for reconsideration of a Commission order must be filed within 30 days of its publication and state specifically the errors claimed as grounds for reconsideration. If the application is granted, the Commission shall rescind, modify, or affirm the order with or without a hearing.²

The instant application was timely filed on May 26, 2015, and alleges the following two errors.

A. The Commission made an error in Paragraph III of order #15588 dated May 15, 2015 that Challenger was knowingly and willfully conducting operations under an invalid/suspended certificate of authority.

Paragraph III of Order No. 15,588 does not contain any finding of unlawful operations; rather, it recapitulates the earlier directive in Order No. 15,293 requiring respondent to show cause why the Commission should not reach such a finding.

B. The Commission made an error in Paragraph I C of order #15588 dated May 15, 2015 that Challenger had a 91-day Insurance Endorsement Gap.

Respondent bases its argument on the contention that the first \$1.5 million primary Global Liberty Endorsement was effective from October 24, 2013, until September 9, 2014. But respondent ignores the

² Compact, tit. II, art. XIII, § 4(d).

effect of Commission Regulation No. 58-07(e), which as noted above provides that coverage under an existing WMATC Insurance Endorsement shall terminate upon "the effective date of a later-executed replacement Endorsement."

Under Commission Regulation No. 58-07(e), the filing of the \$1 million Wesco Endorsement on August 28, 2014, had the effect of terminating coverage under the first \$1.5 million Global Liberty Endorsement as of the June 27, 2014, effective date specified in the Wesco Endorsement. This left respondent \$500,000 shy of the required \$1.5 million in coverage for 91 days, from June 27, 2014, until September 26, 2014, the effective date specified in the second \$1.5 million Global Liberty Endorsement.

III. CONCLUSION

For the reasons stated above, we find that respondent's allegations of error lack merit and affirm Order No. 15,588.

However, inasmuch as respondent has at long last produced the statement and documents required by Order No. 15,085, and considering that the statement, issued by respondent's president, David Mohebbi, verifies that respondent did not conduct any operations from June 27, 2014, through September 29, 2014, while Certificate No. 568 was suspended, and further considering that the statement is corroborated by respondent's records, we shall reopen this proceeding on our own initiative and reinstate Certificate No. 568,³ subject to a one-year period of probation.⁴

The \$250 forfeiture assessed in Order No. 15,588, on the other hand, was predicated on respondent's failure to produce documents on or before October 30, 2014. Respondent's 11th-hour document production does not cure that. Respondent shall pay the forfeiture within 30 days or face revocation of Certificate No. 568.

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration is granted and Order No. 15,588 is affirmed.

2. That this proceeding is reopened under Commission Rule No. 26-04.

3. That Certificate No. 568 is hereby reinstated.

4. That Certificate No. 568 shall be subject to revocation pursuant to Article XI, Section 10(c), of the Compact, if respondent

³ See *In re Angel Enter. Inc., t/a The Angels*, No. MP-09-049, Order No. 12,118 (Aug. 18, 2009) (sustaining forfeiture/revocation order but reopening and reinstating authority).

⁴ See *id.* (assessing one year of probation).

fails to pay \$250 to the Commission by check or money order within 30 days.

5. That respondent shall be placed on probation for a period of one year such that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by respondent during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND DORMSJO:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.
Executive Director